

Message Text

LIMITED OFFICIAL USE

PAGE 01 EC BRU 01935 01 OF 02 291811Z

43

ACTION EUR-25

INFO OCT-01 IO-14 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00

SPC-03 AID-20 EB-11 NSC-07 RSC-01 CIEP-02 TRSE-00

SS-20 STR-08 OMB-01 CEA-02 CIAE-00 COME-00 FRB-02

INR-10 NSAE-00 XMB-07 OPIC-12 LAB-06 SIL-01 L-03 H-03

PA-04 PRS-01 AGR-20 EURE-00 DRC-01 /185 W

----- 012757

O R 291720Z MAR 74

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 6650

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

USMISSION GENEVA

USMISSION OECD PARIS

LIMITED OFFICIAL USE SECTION 1 OF 2 EC BRUSSELS 1935

PASS TREASURY, FRB, CEA, CIEP

E.O. 11652: N/A

TAGS: EFIN, EEC

SUBJ: HARMONIZATION OF BANKING REGULATIONS IN THE EC--

EC COUNCIL DIRECTIVE ON FREEDOM OF ESTABLISHMENT

FOR BANKS

REFS: A) EC BRUSSELS A-316 (NOV. 10, 1972;

B) EC BRUSSELS A-238 (JUNE 19, 1973);

C) EC BRUSSELS A-307 (AUG. 10, 1973);

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 EC BRU 01935 01 OF 02 291811Z

D) STATE A-1911

1. SUMMARY: THERE IS SOME CONCERN IN US BANKING CIRCLES IN THE COMMUNITY THAT THE EC DIRECTIVE ON FREEDOM OF ESTABLISHMENT FOR FINANCIAL INSTITUTIONS MAY BE APPLIED IN A RESTRICTIVE MANNER BY INDIVIDUAL MEMBER STATES SHOULD THE US PASS LEGISLATION SIGNIFICANTLY RESTRICTING THE ACTIVITIES OF FOREIGN BANKS IN THE US. EC COMMISSION OFFICIALS ARE CONVINCED, HOWEVER, THAT THE DIRECTIVE ON FREEDOM OF ESTABLISHMENT--WHICH EXCLUDES FROM ITS PURVIEW BRANCHES, AS DISTINCT FROM SUBSIDIARIES--WILL HAVE NO PRACTICAL EFFECT ON US BANKING ACTIVITIES IN THE COMMUNITY UNTIL THERE IS REAL PROGRESS ON HARMONIZATION OF BANKING REGULATIONS AMONG THE MEMBER STATES. SUCH HARMONIZATION IS STILL VIEWED AS A RATHER DISTANT PROSPECT. END SUMMARY.

2. FROM DISCUSSIONS WITH PRIVATE US BANKERS IN THE EC AND EC COMMISSION OFFICIALS, THE MISSION IS AWARE OF CONCERN AMONG US BANKERS IN EUROPE OVER WHAT THEY PERCEIVE AS A POTENTIALLY ILLIBERAL TREND IN COMMUNITY ACTIVITY IN THE BANKING SECTOR. THIS MATTER HAS ALSO BEEN DISCUSSED WITH MR. TOM FARMER, COUNSEL TO THE BANKERS ASSOCIATION FOR FOREIGN TRADE (BAFT), WHO VISITED BRUSSELS IN LATE JANUARY. AS WE UNDERSTAND IT, THE CONCERN IS MORE RELATED TO EVENTUAL RETALIATORY MEASURES IN REACTION TO POSSIBLE RESTRICTIVE US LEGISLATION AFFECTING FOREIGN BANKS THAN TO ANY SPECIFIC STEPS TAKEN, OR EVEN ENVISAGED, BY BANKING AUTHORITIES IN THE COMMUNITY. EC OFFICIALS ARE AWARE OF THE PROPOSED PATMAN LEGISLATION AS WELL AS A DRAFT BILL EXPECTED TO BE SUBMITTED BY THE FEDERAL RESERVE. PRESS REPORTS HERE INDICATE THAT BANKING AUTHORITIES IN THE COMMUNITY ARE CONSULTING WITH EUROPEAN COMMERCIAL BANKS OPERATING IN THE US AND THAT BANKING AUTHORITIES FROM THE EC MEMBER STATES WILL MEET WITH COMMISSION OFFICIALS IN THE NEAR FUTURE TO DISCUSS THE FED'S PROPOSALS.

4. THE EC COUNCIL DIRECTIVE ON FREEDOM OF ESTABLISHMENT AND PROVISION OF SERVICES WAS PASSED BY THE COUNCIL JUNE 28, 1973, AND IS DUE TO BE PUT INTO EFFECT IN THE MEMBER STATES LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 EC BRU 01935 01 OF 02 291811Z

18 MONTHS LATER, THAT IS, JANUARY 1975. THE MISSION HAS REPORTED PREVIOUSLY (SEE AIRGRAMS UNDER REFERENCE) THAT COMMISSION OFFICIALS WHO WORKED DIRECTLY ON THE DIRECTIVE CONSIDER THAT THE FINAL VERSION WAS CONSIDERABLY WATERED DOWN FROM THE ORIGINAL PROPOSAL AND THAT THE DIRECTIVE IS VIRTUALLY DEVOID OF PRACTICAL SIGNIFICANCE AT THIS TIME FOR EC FINANCIAL INSTITUTIONS. WE HAVE DISCUSSED THIS QUESTION SEVERAL TIMES RECENTLY WITH COMMISSION OFFICIALS, AND THEY STILL

ADHERE TO THIS VIEW. THEY POINT OUT THAT BANKING
CONDITIONS AND REGULATIONS ARE STILL UNDER CONTROL OF
NATIONAL AUTHORITIES AND VARY GREATLY FROM ONE MEMBER
STATE TO ANOTHER. SO LONG AS THIS SITUATION PREVAILS,
THE DIRECTIVE ON FREEDOM OF ESTABLISHMENT OFFERS A
RIGHT THAT IS LARGELY THEORETICAL. FOR EXAMPLE, BEGINNING
IN 1975, A GERMAN BANK--THOUGH IT COULD
LEGALLY ESTABLISH ITSELF IN FRANCE-- WOULD NOT DO SO IN
PRACTICE OWING TO THE FAR STRICTER CONDITIONS FOR BANKING
ACTIVITY IN FRANCE COMPARED WITH THE FRG. SO LONG AS
FRENCH BANKING AUTHORITIES IN PRACTICE WISH TO KEEP
FOREIGN (INCLUDING OTHER EC) BANKS OUT OF FRANCE, THEY
CAN EASILY DO SO THROUGH THE REGULATORY FUNCTION REGARD-
LESS OF THE DIRECTIVE ON RIGHT OF ESTABLISHMENT.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 EC BRU 01935 02 OF 02 291819Z

43

ACTION EUR-25

INFO OCT-01 IO-14 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00

SPC-03 AID-20 EB-11 NSC-07 RSC-01 CIEP-02 TRSE-00

SS-20 STR-08 OMB-01 CEA-02 CIAE-00 COME-00 FRB-02

INR-10 NSAE-00 XMB-07 OPIC-12 LAB-06 SIL-01 L-03 H-03

PA-04 PRS-01 AGR-20 EURE-00 DRC-01 /185 W

----- 012858

O R 291720Z MAR 74

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 6651

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

USMISSION GENEVA

USMISSION OECD PARIS

LIMITED OFFICIAL USE SECTION 2 OF 2 EC BRUSSELS 1935

4. US BANKING SUBSIDIARIES IN THE COMMUNITY, SINCE THEY ARE FULLY ESTABLISHED, CAPITALIZED FINANCIAL INSTITUTIONS, FALL WITHIN THE PURVIEW OF THE DIRECTIVE. THAT IS, THEY TOO, COULD ESTABLISH THEMSELVES IN ANOTHER MEMBER STATE. BRANCHES WOULD NOT HAVE THIS RIGHT. THIS DOES NOT NECESSARILY MEAN, HOWEVER, THAT ONCE THE DIRECTIVE COMES INTO EFFECT, US BRANCH BANKING IN THE COMMUNITY WOULD BE INHIBITED, FOR IT WOULD STILL FALL UNDER THE JURISDICTION OF NATIONAL BANKING AUTHORITIES. THUS, IF INDIVIDUAL NATIONAL BANKING AUTHORITIES IN THE COMMUNITY WISHED TO LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 EC BRU 01935 02 OF 02 291819Z

RESTRICT US BANKING HERE, EITHER BY SUBSIDIARIES OR BRANCHES, THEY WOULD BE FREE TO DO SO REGARDLESS OF THE DIRECTIVE. SIMILARLY, IF THESE AUTHORITIES WISHED TO MAINTAIN A LIBERAL ATTITUDE TOWARDS US BANKING IN THE COMMUNITY, THERE IS NOTHING IN THE DIRECTIVE WHICH WOULD PREVENT THEM FROM DOING SO.

5. THE POINT COULD BE SUMMED UP BY SAYING THAT THE LINK BETWEEN THIS DIRECTIVE AND ANY POSSIBLE RESTRICTIVE MEASURES THAT WOULD AFFECT US BANKING IN THE COMMUNITY IS A COINCIDENCE OF TIMING. THE REAL CONCERN OF US BANKS IN THE COMMUNITY SEEMS TO BE THAT THE US MAY PASS LEGISLATION RESTRICTIVE OF FOREIGN BANKING IN THE US AND THAT--ON THE BASIS OF AN AS YET UNDEFINED CONCEPT OF RECIPROCITY-- US BANKING IN THE COMMUNITY WOULD THEN ALSO BE FACED WITH NEW RESTRICTIONS. A POSSIBLE ADDITIONAL CONCERN IS THAT A MEMBER STATE WOULD TRY TO PREVENT THE ESTABLISHMENT OF A US BANKING SUBSIDIARY ALREADY ESTABLISHED IN ANOTHER MEMBER STATE ON THE GROUNDS THAT THE OWNERSHIP OF THE SUBSIDIARY IS LOCATED OUTSIDE THE COMMUNITY. ANY SUCH RESTRICTIONS, HOWEVER, WOULD APPEAR TO BE IN CONFLICT BOTH WITH THE DIRECTIVE ITSELF AND THE LIKELY INTERPRETATION OF IT UNDER ARTICLE 58 OF THE TREATY OF ROME, WHICH ASSIMILATES COMPANIES CONSTITUTED IN ACCORDANCE WITH THE LAW OF A MEMBER STATE, AND HAVING THEIR REGISTERED OFFICE, CENTRAL MANAGEMENT OR MAIN ESTABLISHMENT WITHIN THE COMMUNITY, TO NATURAL PERSONS WHO ARE NATIONALS OF MEMBER STATES.

6. IN ADDITION TO FREEDOM OF ESTABLISHMENT, THE DIRECTIVE PROVIDES FOR FREE PROVISION OF SERVICES WHERE SUCH SERVICES RELATE TO CAPITAL MOVEMENTS THAT HAVE ALREADY BEEN LIBERALIZED. HERE, COMMISSION OFFICIALS POINT OUT THAT THE COMMUNITY IN THE LAST TWO

YEARS HAS ACTUALLY RETROGRESSED FROM ITS GOAL OF FREEING CAPITAL MOVEMENTS. WITH SO MANY CAPITAL CONTROLS STILL IN EFFECT WITHIN THE COMMUNITY, FREE PROVISION OF SERVICES IS OF LITTLE PRACTICAL CONSEQUENCE.

7. EC COMMISSION OFFICIALS RECOGNIZE THAT IN ORDER TO GIVE MEANING TO THE DIRECTIVE ON FREEDOM OF ESTABLISHMENT LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 EC BRU 01935 02 OF 02 291819Z

AND PROVISIONN OF SERVICES, PROGRESS WILL HAVE TO BE MADE IN HARMONIZING EXISTING REGULATIONS AND CONTROLS ON BANKING ACTIVITY IN THE COMMUNITY. GIVEN CURRENT DISPARITIES AMONG THE MEMBER STATES IN THE BANKING SECTOR, THIS UNDERTAKING WILL BE A GRADUAL ONE. THE MISSION WILL REPORT FURTHER ON COMMUNITY EFFORTS IN THIS AREA IN THE NEAR FUTURE. BARBIS

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, BANK LAW, BANK DATA, BANKS
Control Number: n/a
Copy: SINGLE
Draft Date: 29 MAR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974ECBRU01935
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740069-0547
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t1974035/aaaaadxz.tel
Line Count: 243
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: A) EC BRUSSELS A-316 (NOV. 10, 1972;
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 02 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02 APR 2002 by collinp0>; APPROVED <05 JUN 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: HARMONIZATION OF BANKING REGULATIONS IN THE EC-- EC COUNCIL DIRECTIVE ON FREEDOM OF ESTABLISHMENT
TAGS: EFIN, US, EEC, (PATMAN)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005